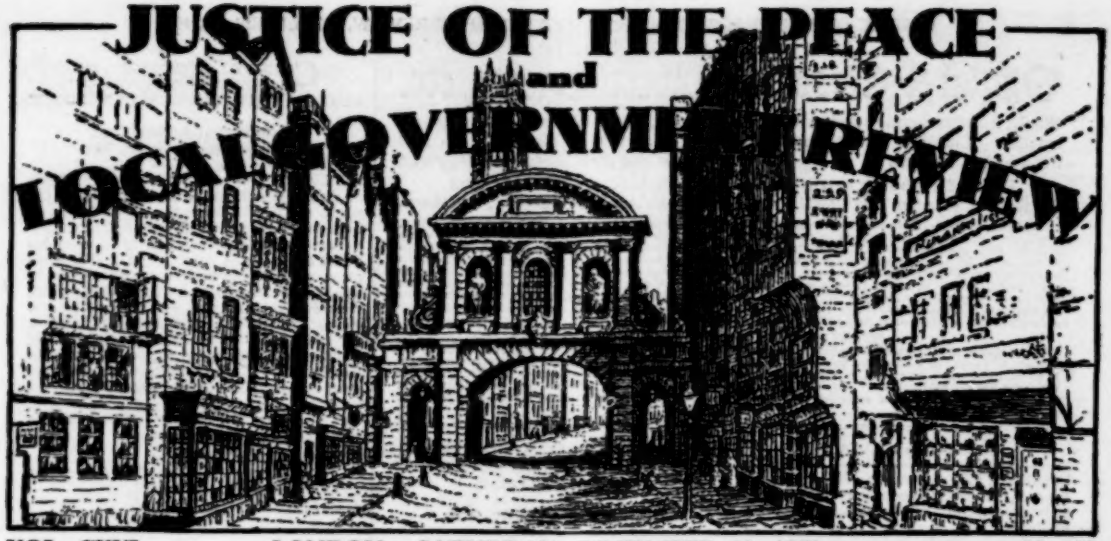

VOL. CXVI LONDON: SATURDAY, DECEMBER 13, 1952 No. 50

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* **10** ***a.m. Thursday***

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex
Telephone: CHICHESTER 3637 (P.B.E.) *Telegraphic Address:* JUSLOCGOV, CHICHESTER

NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note*: Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

SITUATIONS VACANT

UNADMITTED MANAGING CLERK required for general country practice by old established firm of Solicitors in South Midlands. Must be capable of acting without supervision. Apply, stating age, experience and salary required, Box B.21, Office of this paper.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU T. E. Hoyland. **Ex-Detective Sergeant.** Member of B.D.A., F.B.D., Associated American Detective Agencies, and the World Secret Service Association. Confidential enquiries; Divorce, etc.; Over 600 agents in all parts of the World. Over twenty-five years C.I.D. and Private Detective Experience at your service. 1, Mayo Road, Bradford. Tel.: 26823 day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel.: Boldon 7301. Available day and night.

BOROUGH OF SOUTHGATE

Appointment of Second Assistant Solicitor

APPLICATIONS are invited for the appointment of Second Assistant Solicitor. Applicants must have a sound knowledge of conveyancing (including Land Registry practice), and Police and County Court procedure. The commencing salary will be at a point within A.P.T. Grades VII/IX (£710—£935 per annum) according to the experience and qualifications of the successful applicant. The appropriate "London Weighting" allowance will be payable in addition.

Superannuable post, subject to medical examination. National Scheme of Conditions of Service apply. The person appointed must devote his whole time to duties of the office and must not engage in private practice.

Application forms are obtainable from the undersigned, to whom they should be returned, with the names of two referees, by not later than Wednesday, December 31, 1952.

Canvassing, either directly or indirectly, will be a disqualification.

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green, N.13.

COUNTY BOROUGH OF CROYDON MAGISTRATES' COURTS COMMITTEE

Justice of the Peace Act, 1949

APPLICATIONS are invited from persons qualified in accordance with the above Act, for the whole-time appointment of clerk to the justices. Croydon has a population of 250,000. The salary will be in accordance with the scales to be settled arising out of the negotiations now in progress concerning Justices' Clerks' salaries. The clerk appointed will act as Secretary to the Licensing Planning Committee. The appointment will be permanent and superannuable in accordance with the above Act. Applications, giving qualifications together with experience, and stating age and the date when the applicant would be able to take up duty, together with two recent testimonials, should be made to me not later than January 3, 1953. Canvassing will be a disqualification.

OLIVER A. MILAN,
Secretary to the Magistrates' Courts Committee.

Magistrates' Clerk's Office,
Town Hall,
Croydon.

[In last week's issue, owing to a printing error, the population of Croydon was given as 25,000. The population of Croydon is in fact 250,000.]

CITY OF HEREFORD

Appointment of First Assistant to Clerk to the Justices

APPLICATIONS are invited for the above appointment. Applicants must have a sound knowledge of, and extensive experience in, the duties of a Magistrates' Clerk's Office and be competent of taking occasional Courts. Salary £450/£500 according to qualifications and experience.

Applications, in candidate's own handwriting, giving age, particulars of present duties and previous experience, together with copies of two recent testimonials, should reach me not later than December 20, 1952.

FRANK WILLIAMS,
Clerk to the Justices.

Magistrates' Clerk's Office,
The Court House,
Delacy Street, Hereford.

COUNTY BOROUGH OF MIDDLESBROUGH MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk Justices of the Peace Act, 1949

APPLICATIONS are invited from Barristers or Solicitors qualified in accordance with the above Act for the whole-time appointment of clerk to the justices for this county borough.

The clerk will be required to take up his duties on or about April 1, 1953. The commencing salary will be in accordance with the scale to be determined by the National Joint Negotiating Committee as approved by the Home Secretary. Middlesbrough has a population of 147,000. The appointment will be permanent and superannuable. Applications (marked "C" on the outside of the envelope) must be submitted to me before 10 *a.m.* on January 8, 1953, and should give qualifications, age, experience, and the names of two persons to whom reference may be made.

T. BELK,
Clerk of the Committee.

Magistrates' Court,
Middlesbrough.

COUNTY BOROUGH OF MIDDLESBROUGH

ASSISTANT Solicitor required. Grade A.P.T. Va—VII (£625—£785). N.J.C. Conditions, Superannuation Scheme.

Application forms from the Town Clerk, to be returned by December 31, 1952.

CITY OF LIVERPOOL

Probation Officer

APPLICATIONS are invited for the appointment of Probation Officer, Male (whole-time).

Applicants must be not less than twenty-three years, nor more than forty years of age, unless at present serving as a whole-time Probation Officer.

Salary and appointment will be in accordance with the Probation Rules.

Application form, obtainable by sending a stamped addressed envelope to the undersigned, should be completed and returned not later than December 20, 1952.

H. A. G. LANGTON,
Clerk to the Justices and Secretary to the Probation Committee.

City Magistrates' Courts,
Dale Street,
Liverpool, 2 (J.A. 3069).

BOROUGH OF CHELMSFORD

Deputy Town Clerk

APPLICATIONS are invited from Solicitors, with considerable experience of local government law and administration, for the above appointment at a salary of £1,000 rising by three annual increments to a maximum of £1,075. Full particulars may be obtained from the undersigned. Closing date December 22, 1952.

B. A. FRANCIS,
Town Clerk.

Municipal Offices,
Duke Street,
Chelmsford.
December 2, 1952.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVI. No. 50. LONDON : SATURDAY, DECEMBER 13, 1952

Price 2s. 3d. (including Reports)
Price 1s. 3d. (without Reports)

Pages 787-802

Offices : Little London, Chichester, Sussex.

[Registered at the General Post Office as a Newspaper.]

NOTES of the WEEK

Cruelty and Desertion

It is true that facts which are sufficient to show persistent cruelty may also amount to desertion, if they lead to the inference that the husband intended by his conduct to make cohabitation impossible, *Bowron* v. *Bowron* (1925) 89 J.P. 43. The limits that must be placed upon treating cruelty as constructive desertion were, however, illustrated by the case of *Pike* v. *Pike* (*The Times*, November 21), in which the Court of Appeal allowed the appeal of a husband against whom a decree had been granted on the ground of desertion. The Commissioner had accepted the wife's evidence that she was driven from home by her husband's conduct, and held that his request to her to return was not genuine.

In his judgment, Hodson, L.J., after referring to other reasons why the decree could not be upheld, said there was nothing to amount to constructive desertion. He wished to make it clear that when a case put forward was in the nature of a case of cruelty, it was not possible to build up a case of constructive desertion by what was really a case of cruelty which was less than cruelty.

Denning, L.J., referred to this case as another instance in which the doctrine of constructive desertion was allowed to run wild. The wife had left her husband and refused to return. She said her husband's previous conduct justified her refusal. If he had previously treated her with cruelty so much so that there was a reasonable apprehension of injury to her if she went back, she would of course be justified in refusing to return, but if his conduct was less than cruelty recognized by law then he (his Lordship) did not think that she was justified. Any other view would mean that under the guise of constructive desertion there would be introduced new heads of divorce not authorized by the statute.

Stating a Case after the Prescribed Time has Elapsed

On an *Ex parte* motion before the Divisional Court (noted at (1952) W.N. 505) for leave to set down for hearing an appeal, by Case Stated, from a decision of quarter sessions notwithstanding that the time for so doing had expired, the court held that the applicant's solicitors' inadvertence amounted to " special circumstances " within the meaning of R.S.C. Or. 59, r. 30, which provides that " No such appeal [from a court of quarter sessions by way of Case Stated] shall be entered for hearing after the expiration of six months from the date of the judgment . . . except by leave of the Divisional Court on special circumstances being shown." It will be recalled that where an appeal by way of Case Stated is made from a decision of a summary court, r. 52 of the Summary Jurisdiction Rules, 1915, provides that the case " shall be stated within three calendar months after the date of the application . . . ", but nevertheless it has been held in a line of cases culminating in *Moore* v. *Hewitt* [1947] 2 All E.R. 270 ; 111 J.P. 483, that the rule is directory only and not mandatory. Accordingly the Divisional Court has assented to an extension of time for the filing of Case Stated by justices where the grounds for the extension have been difficulties in connexion with the justices themselves such as illness or death (*Nantyglo U.D.C.* v. *Ebley* (1905) 69 J.P. 40 ; *Haycock* v. *Joel* (1924) 88 J.P. 717) ; where there has been great difficulty in agreeing the form of the Case Stated (*Nixon-Watts* v. *Battersea B.C.*, noted at 92 J.P.N. 479) ; and further in *Moore* v. *Hewitt*, *supra*, where the case was not stated for five months, the court overruled a preliminary objection that the appeal was out of time as there was nothing before the court to show how the delay arose, and in particular there were no facts to show that the delay in stating the case was due to the applicant.

At first sight it might appear from the decision in *Rippington & Hicks & Son (Oxford), Ltd. and Another* [1949] 1 All E.R. 239 ; 113 J.P. 121—where the case was not stated within three months owing to the illness of the appellant's solicitor—that there may be a divergence between the way in which the Divisional Court will treat an application for extended time in a case governed by R.S.C. Or. 59, and one governed by the Summary Jurisdiction Rules. However it must be remembered that in the *Rippington* case, *supra*, the appellant's solicitor was the Treasury Solicitor (who might be expected to have sufficient staff to cope with the illness of one official), and further in the case referred to in the Practice Note above, it was emphasized that the court would not always give leave whenever there had been negligence or inadvertence on the part of professional clients.

In conclusion we may perhaps refer to the case of *Roberts* v. *Evans and Another* (1949) 113 J.P. 137, in which Lord Goddard, C.J. pointed out that if an applicant finds that owing to the conduct on the part of the respondent's solicitor, of the justices' clerk, or the justices, the time is expiring, it would be a good thing for the applicant to apply to the court for an extension of time, and " if the lapse of time is due to the fault of the respondent, or the justices' clerk, or the justices, this court will know how to deal with it."

Removal of Furniture as an Agricultural Operation

Our attention has been called to an appeal heard by the Somerset Quarter Sessions Appeals Committee in which, according to the report in a local newspaper, counsel for the appellant said that the only point at issue was what was the meaning of " agricultural purposes " in s. 4 (2) (*a*) (i) of the Vehicles (Excise) Act, 1949, as substituted by the Finance Act, 1950.

The convictions appealed against arose out of the use of a tractor, licensed in pursuance of the said section and of sch. 3 to that Act (also amended by the 1950 Act) at the £2 rate, for the purpose drawing on a road a trailer loaded with furniture which was being moved from a council house to a tied cottage belonging to a farmer, the owner of the tractor. This was permissible only if it could be said that the use of the tractor in this way for the removal of furniture was a use for an "agricultural purpose."

The learned chairman of Quarter Sessions said, as reported, "With considerable hesitation was have decided to dismiss this appeal with costs."

We have not the advantage of knowing what arguments were put forward in support of the contention that the use in question was a use for an agricultural purpose, but we see considerable difficulty in knowing where the line could be drawn if it were once admitted that it was such a purpose. Clearly it is necessary for a farmer to have men to work on his farm, and they must have somewhere to live. Equally, if they are to live in a tied cottage on the farm, their furniture must be transported there. But if this is an agricultural operation, what of the case in which the farmer says that his men must have some relaxation and require to go to the cinema in a neighbouring town? Is transporting them to and from this town using a vehicle for an agricultural purpose?

We can certainly sympathize with the farmer and his difficulties, but we should have been surprised had this case been decided otherwise.

Hire-Purchase—Motor-Cars and Other Articles

The hire-purchase of various kinds of goods is now becoming very prevalent as may be seen by looking in shop windows, and unless curtailed may reach the scale at which it operated before the war. Sometimes, such as in the case of household equipment like gas cookers or washing machines, this may be a sound method when it is accompanied by a maintenance agreement. Occasionally, however, housewives are persuaded to buy such articles as water softeners by persuasive young men who call when the husband is away and which they cannot afford. Hire-purchase was becoming so abused in 1938 that the Hire-Purchase Act was then passed to protect persons entering into hire-purchase agreements. A new measure of control has been imposed by the Hire-Purchase and Credit-Sale Agreements (Control) Order, 1952 (S.I. 1952 No. 121) under which 33⅓ *per cent.* of the cash price list must be paid at the date of purchase of a specified list of goods and the balance paid over a period not exceeding eighteen months. The same principle applies to goods bought under a credit-sale agreement which means an agreement for the sale of goods under which the whole or part of the purchase price is payable by instalments spread over a period of not less than nine months. Under the system operating usually in this country the goods are taken by the purchaser at the time of the initial transaction. Christmas clubs are in a different category as money is then paid by instalments to entitle the customer to buy goods to the value of the payments, perhaps at a discount, at some time before Christmas. In some countries there is another system which is known as "lay-by." There a person, usually a woman may see an article in a shop which she likes. She pays a deposit and the article is put on one side until she has completed the payments. In the meantime, if the person is a woman, she may well have altered her mind as to whether she likes it but she must either take it or forfeit the money. We should not like this system to be introduced here.

On the question of hire-purchase, motor-cars are amongst the goods covered by the Order. Until recently it has been difficult to buy a new car, and still is for the more popular makes. When, however, this becomes a buyers' market and the value of second-hand cars, taken in part exchange slumps, some people who need cars for their own use, such as officers or members of local authorities, may find it difficult to finance the transaction. Some local authorities own the motor-cars used by their staffs and others have a system whereby loans are granted towards the purchase of cars. The Board of Trade have intimated that assistance given by a local authority towards the purchase of cars does not offend against the Order. More local authorities may have to adopt a similar practice but this should be combined with a strict control of the extent to which the cars are used on official business. This is a type of expenditure which sometimes justifies scrutiny. It is not only the officers of local authorities who require motor-cars. Some members, particularly of county councils and rural district councils, cannot do their official business without the use of a car. Some of them may have difficulty in finding the money to buy a new car but the council cannot buy for them.

Remand to Home

It was understandable that the national press should have given prominence to the case at Newport, Isle of Wight, where a boy of eight was charged with the murder of a brother seventeen days old. Since the baby died of a head injury which could have been inflicted with a feeding bottle found beside him, and the boy of eight could have used the bottle for that purpose, and since jealousy of the newcomer is commonly found in such a relationship, it was natural to suspect the elder boy. This being so, the police can hardly be blamed for charging him in the first instance, even though "malice" was, on the facts disclosed, purely inferential, and although it will be widely felt that the Director of Public Prosecutions did right to intimate, at the second hearing, that the Crown would not offer further evidence. Formal discharge was followed by the hearing of a summons against the parents, alleging that the boy was not receiving proper care and attention, this being based apparently on the same facts and on evidence that the boy had once assaulted a woman neighbour who refused to give him "a tanner for the guy." Since the magistrates found the allegation against the parents not to be made out, it remains problematical whether it was wise to make it at all. The chief legal interest in the case is in the boy's remand in custody. This, we are informed by a local correspondent, caused much feeling in the Island. The boy's father urged that he should be sent home but (according to the *Isle of Wight County Press*) the magistrates on the advice of their clerk stated that they were bound in law to send him to a remand home, if one was available, as it was. This statement indicates misunderstanding of s. 27 of the Criminal Justice Act, 1948. That section, of which the marginal note is "remand and committal of persons under twenty-one," does not deprive magistrates of their regular power of releasing a person charged with an offence, on bail. It says that where the person charged is not so released he must, if under seventeen, be remanded to a remand home, subject to certain further provisions in the section. True, it can almost never be justifiable to grant bail to a person arrested on a murder charge—but then a child of eight is hardly ever so charged. In this Newport case, the boy could, therefore, lawfully have been remitted to his parent's home, on bail for his due appearance. There may, no doubt, have been adequate reasons for not letting him go home in the interval while the Director was being informed of the case: the fact that "care and protection" was lurking in the background may even have been sufficient reason. We are concerned only to make the point that under s. 27 the boy need not as a matter of law have been remanded in custody at all.

Horseflesh Again

The Public Health (Meat) (Amendment) Regulations, 1952, S.I. 1952 No. 1481, came into force on August 31, 1952, and go some way towards closing a gap to which more than once we have drawn attention—but do not go nearly far enough. The Public Health (Meat) Regulations, 1924, S.R. & O. 1924, No. 1432, are divided into parts, of which Part II deals with slaughterhouses and slaughtering; Part III with meat marking; Parts IV and V with stalls, shops, and stores; Part VI with transport and handling. The new regulations bring horses and other equine animals into Part II only. That Part falls into two divisions, which respectively require notice to be given of slaughtering (and certain other things to be done to facilitate inspection) when an animal is slaughtered elsewhere than in premises managed by a local authority, and impose a few duties for maintaining cleanliness in slaughterhouses. It is all to the good that these requirements are now applied to places where equine animals are slaughtered, but in so applying them the Ministers of Food and Health (who jointly made the new regulations) have still neglected the worst cause, according to our information, of contaminated meat derived from horses. This lies in the transport and handling: Part VI of the regulations of 1924. Carcases and sections of carcases of horses are carted about with no protection from dirt, and are dragged from the lorry across filthy pavements, through mud and dung, and finally cut up, stored, and sold in complete disregard of hygiene. In 1924 the greater part of the flesh of horses and donkeys sold in this country was sold for the food of dogs and cats: protecting them from diseases due to filth would have been beyond the scope of regulations under the older Acts and also under the Food and Drugs Act, 1938. The few human eaters of horse and donkey meat were foreigners; their contracting such diseases was (presumably) not important enough to call for prophylactic action by the Minister of Health. Now things are far otherwise. Much of the horseflesh sold in English towns is avowedly for consumption by human members of the household for which it is bought; still more, almost certainly, is bought up before it gets into the shops, to be used in the kitchens of establishments where skilful cooking can disguise its origin. Hence the rocketing prices, which have made it as economical to let the dog have the household's weekly dole of beef or mutton as to buy horseflesh for his dinner. It is difficult to understand why the two Ministers now concerned have not applied Part VI of the regulations of 1924, and indeed Parts IV and V. No legitimate interest would have been damnified.

Hertfordshire Accounts 1951/52

Mr. R. S. McDougall, A.C.A., F.I.M.T.A., has sent us a copy of the attractively printed accounts of his county council. Total expenditure for the year was £8,500,000 (of which half was paid in salaries and wages) and after deducting government grants and other income net expenditure chargeable to rates was £3,733,000. Because of its high rateable value per head of population (£8 0*s.* 5*d.*) Hertfordshire is given no Exchequer Equalization Grant and therefore has a higher than average proportion of expenditure falling upon the ratepayers. Rates precepted for the year at 15*s.* 1*d.* represented a maximum increase of 3*d.* and produced £3,507,000 which was insufficient to meet expenditure. Balances held were drawn upon to the extent of £226,000 to make up the difference and were thus reduced at the end of the year to £581,000. In the absence of some extraordinary reduction in expenditure it seems therefore that Hertfordshire, like very many other authorities, will be compelled to increase its precept again when the 1953/54 figure is determined. Rates for the current year total 16*s.* 5*d.*

We are interested to note that during the year the county council invested £277,000 of Superannuation Fund money in irredeemable 2½ *per cent.* Treasury Stock (Dalton's)—not a very popular stock with the generality of local authorities. As the nominal value of the stock acquired was £481,000 and the real interest rate 4·34 *per cent.* the Authority is no doubt well satisfied.

Most local authorities have been seriously affected by the fall in the value of investments. Hertfordshire is no exception. It has been necessary to provide in its Consolidated Loans Fund a reserve of £303,000 to cover depreciation.

The statement of statistics and costings is as informative and useful as ever, and we quote a few examples. Ambulance costs have fallen to 2*s.* 4*d.* per mile run and considerable use is made of the voluntary car service, which musters 200 drivers who did 591,000 miles at a cost of between 7*d.* and 5*d.* a mile. The number of school meals served rose to 9,900,000, thus following the national trend, and each meal cost 1*s.* 2½*d.* There are 50,000 children attending primary schools, each pupil costing about £26 a year, and 27,000 at the secondary schools where the annual cost per scholar is £47. Expenditure on the police service is equal to 22*s.* per head of population. It costs 2*s.* to issue each motor-car licence, but only 7½*d.* to issue each book from the county library.

The Economics of the Health Service

We believe in the Welfare State and that hospital treatment should not be denied to anyone in need of it, but it is salutary that warnings are sometimes uttered at the growing cost and that the question is asked "Where will this lead to?" Dr. Ffrangeon Roberts, the author of the book "The Cost of Health," in speaking at the annual conference of the British Hospitals Contributory Schemes Association, suggested that if hospital provision is extended to meet the growing needs, particularly of the aged population, there may be more capacity for treating disease than the country can afford. He estimated that on the basis of the hospital accommodation now thought to be necessary for the elderly 141,000 beds will be required by 1971 instead of the present number of 57,000. This shows clearly that increased attention must be given to the prevention of the need for hospitalization by developing the services aimed at enabling elderly people to remain in their own homes and by providing other forms of care for those who cannot remain in their own homes but need not be in hospital. Referring to the health service scheme generally Dr. Roberts said there was the feeling of "getting something for nothing." People were demanding their "rights." He urged that it was the task of the contributory schemes to restore the sense of personal responsibility and of sound insurance which he considered to be a most important component and essential to the democratic way of life.

Gypsies and Other Nomadic Travellers

The Kent County Council has carried out a survey of gypsies and other nomadic travellers at the request of the Ministry of Local Government and Planning (now the Ministry of Housing and Local Government) and a report of the survey has been made by the county planning officer which will be of interest beyond the sphere usually covered by local government reports. The survey was not intended to deal with the occupants of camps, whether living in shacks or otherwise, unless they could be properly classed as nomadic and a clear distinction is drawn between gypsies and other travellers apparently for the first time since the subject was considered in a Scottish report some thirty-five years ago. In an introduction there is an interesting reference to the origin of Romanies who seem to have reached Britain early in the sixteenth century. At one time they were subject to severe penalties but immunity was offered to those who forsook their "naughty life" and adopted some service or lawful occupation.

Local authorities derive their powers to control camping sites from the Public Health Act, 1936, which relate to sanitary matters and from the Town and Country Planning Act, 1947, which, with the Town and Country Planning General Development Order, 1950, is concerned solely with the planning aspect of control. It is necessary for gypsies and travellers, like any other persons wishing to carry out development, to obtain planning permission under the Town and Country Planning Acts, and a licence under the Public Health Act before establishing a permanent camp. They may, however, occupy a site for not more than forty-two consecutive days or more than sixty days in any twelve months without a licence. It is similarly not necessary to obtain planning permission to the use of land for camping purposes if it is not so used for more than twenty-eight days in total in any calendar year.

The survey was carried out by visiting such winter quarters as appeared to be occupied by gypsies and other nomadic travellers and later observing the position in the summer months, 294 families containing some 1,150 persons were found to be living in these circumstances in February, 1952, of whom a fairly large proportion were Romany families. The summer survey was made in August and September when the number had increased to 2,317 and 3,098 respectively. This does not take account of the 90,000 persons who lived in hop-pickers' hutted camps. A considerable number of gypsies move into Kent for hop-picking from Lincolnshire and neighbouring areas to which they return for the potato lifting season. Many nomadic families travel in motor vehicles equipped with tents, and do not use caravans. The report gives an analysis of the types of occupation followed by those covered by the survey. Very few are employed on ordinary farm work.

The county education office contributed a section to the report which shows that the education problem is not one of numbers, as there were not more than 350 children of school age of whom a substantial proportion attend school during the winter months. It is satisfactory to learn that the attendance of groups of these children at ordinary schools need create no significant social problem within the school and that there is little real evidence that standards of cleanliness and health differ widely from that of corresponding classes in the normal community.

As to tendencies and possible future changes in the occupation habits of nomadic families those who have studied the problem tend to join one or other of two groups holding diametrically opposed views. There are those who hold that nothing should be done to force or even discourage gypsies and travellers to forsake their nomadic existence but there are some who contend, on the contrary, that they should gradually become part of the social and economic structure of the country and that nothing should be done to encourage the continuance of nomadic habits. It is felt that the facts disclosed by the Kent survey justify the suggestion that some national decision on policy must precede the making of any long-term arrangements as to living quarters, facilities for employment and education of those concerned.

THE CUSTOMS AND EXCISE ACT, 1952

The Customs and Excise Act, 1952, which comes into force on January 1, 1953, contains much of interest to those who are likely to be concerned with the enforcement of its provisions in courts of summary jurisdiction, since it not only consolidates but also amends numerous enactments relating to customs and excise.

So far as courts of summary jurisdiction are concerned, the provisions of the Act fall mainly under four headings. First there are those sections which deal with procedure in these courts before, during and after the hearing; secondly there are those sections dealing with evidence, then come the provisions relating to condemnation proceedings, and lastly certain miscellaneous sections covering such subjects as search warrants, the searching of persons, occasional licences and clubs.

With regard to the first of these headings, s. 281 of the Act lays down that, except in proceedings on indictment in Scotland, legal proceedings can only be instituted by order of the Commissioners and in the name of an officer authorized by them or by and in the name of the Attorney-General, or, in Scotland, the Lord Advocate, or, in Northern Ireland, the Attorney-General for Northern Ireland. In this connexion, it should be pointed out that the order of the Commissioners can be given by any one or more of them, or, if they so authorize, by their Secretary or Assistant Secretary, or by any person so authorized by them either generally or specially (s. 4 (1)). The only exception to this restriction on prosecutions is where a person is detained under the Act when the court has power to deal with the defendant although the necessary authorization has not been obtained. This right of detention may be exercised by a constable, an officer of Customs and Excise, or a member of H.M. Forces or Coastguard, who can detain any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence for which he is liable to be detained under the Customs or Excise Acts within three years from the date of commission of the offence. If such detention is impracticable, or where a person so detained escapes, he may be detained at any time and proceeded against as if the offence had been committed at the date of final detention (s. 274). This would appear to extend the normal time limit of three years for the commencement of proceedings laid down by s. 283 of the Act.

Jurisdiction is conferred upon the court (*a*) where the defendant resides or is found, (*b*) where the thing was detained, seized, found or forfeited, or (*c*) where the offence was committed or, if the offence was committed in the Isle of Man, any court having jurisdiction in the Island (s. 284). If the offence was committed at some place on the water or in the air outside the area of any commission of the peace, then the court having jurisdiction is that having jurisdiction in the place in the United Kingdom in which the defendant is found or to which he is first brought after commission of the offence.

Process issued by a court of summary jurisdiction can be served anywhere in the United Kingdom without endorsement and can be served by hand either (*a*) personally on the defendant, (*b*) by leaving it at the defendant's last known place of abode or business or, in the case of a body corporate, at their registered or principal office, or (*c*) by leaving it on board any vessel or aircraft to which the defendant may belong or may have lately belonged (s. 282). Such process can be served by an officer, *i.e.*, a person appointed by the Commissioners.

The persons entitled to conduct proceedings before a court of summary jurisdiction or examining justices are either an officer or any other person appointed by the Commissioners although not a barrister, advocate or solicitor, or else in England, Wales or Northern Ireland, a solicitor employed by the Commissioners although not holding a current practising certificate (s. 291).

If a court of summary jurisdiction commences under the Criminal Justice Act, 1948, s. 28 (1) to hear a case under the Customs or Excise Acts as examining magistrates, then, under

the Act the court is debarred from dealing with the case summarily without the consent of the Commissioners, or, if the proceedings have been instituted by the order and in the name of the Attorney-General, without the Attorney-General's consent (s. 283 (3)). Moreover, by s. 283 (2), where a penalty of two years' imprisonment with or without a pecuniary penalty is imposed by the Customs or Excise Acts, then the charge is triable summarily or on indictment (or, in the Isle of Man, on information). In these circumstances, s. 28 (1) of the Criminal Justice Act, 1948, and, on and after June 1, 1953, s. 18 (1) of the Magistrates' Courts Act, 1952, will apply. Section 283 (2) also limits the maximum sentence of imprisonment which can be passed by a court of summary jurisdiction for an offence under the Customs or Excise Acts to twelve months, but, where the offence carries both a pecuniary penalty plus imprisonment, and an alternative sentence is fixed in default of payment of the fine, then an aggregate total not exceeding fifteen months can be imposed (s. 285 (2)). It should, however, be observed that s. 283 (2) and (3) does not apply to Scotland, but, without prejudice to any other method of prosecution, and subject to any express provision made by the enactment in question, it is competent in Scotland to prosecute any offence under the Customs or Excise Acts summarily in the Sheriff Court, in which case the limit of imprisonment on summary conviction is six months.

The scale of imprisonment in default of payment of a fine is as specified in the Summary Jurisdiction Act, 1879, s. 5, or the Summary Jurisdiction (Scotland) Act, 1908, s. 48, for sums not exceeding £50. Thereafter the following scale is to apply (s. 285 (1)) :

Over	£50	not exceeding	£100—	6	months
„	£100	„	£250—	9	„
„	£250		—12		„

A separate scale is, however, laid down in connexion with proceedings in the Isle of Man (sch. VIII).

In England (including the Isle of Man), Wales and Northern Ireland, the court has full powers of mitigating any pecuniary penalty as it thinks fit (s. 286 (2)), and such pecuniary penalties are after deduction of court and police fees payable to the Commissioners (s. 287).

The Commissioners are, under the Act given very wide powers after judgment has been passed by the court. Under s. 283 (4), the prosecution is given a right of appeal to quarter sessions without prejudice to their right of appeal by way of Case Stated. This right of appeal to quarter sessions does not, however, apply to Scotland. In addition, the Commissioners are empowered to mitigate any pecuniary penalty or remit any portion of a term of imprisonment imposed by a court of summary jurisdiction (s. 288 (*c*) and (*d*)). They can also, except in proceedings on indictment in Scotland, stay, sist or compound any proceedings for an offence, or for the condemnation of any thing as being forfeited under the Customs or Excise Acts (s. 288 (*a*)).

The provisions as to evidence are mainly contained in ss. 289 and 290. Under the former section, any document purporting to be signed by one or more of the Commissioners, or by their order, or by any person with their authority, shall, until the contrary is proved, be deemed to have been so signed and to be made and issued by the Commissioners, and may be proved by production of a copy of the document purporting to be so signed. The Documentary Evidence Act, 1868, also applies in relation to any document issued (*a*) by the Commissioners or (*b*) by the Commissioners of Customs either alone or jointly with the Commissioners of Inland Revenue, or by the Commissioners of Inland Revenue alone if relating to the revenue of excise, if issued before April 1, 1909. Under this latter Act, such documents can be proved *prima facie* (i) by a copy of the *Gazette* purporting to contain such a document (ii) by a copy purporting to be printed by the Government printer or (iii) by a copy or extract purporting to be certified as true by any of the Commissioners or their Secretary or Assistant Secretary.

In addition, s. 290 (1) of the Customs and Excise Act, 1952, lays down that an averment in any process in proceedings under the Customs or Excise Acts (*a*) that such proceedings were instituted by order of the Commissioners (*b*) that any person is, or was, a Commissioner, officer, or constable or a member of H.M. Forces or Coastguard (*c*) that any person is or was appointed or authorized by the Commissioners to discharge, or was engaged by the orders or with the concurrence of the Commissioners in the discharge of any duty (*d*) that the Commissioners have, or have not, been satisfied as to any matter as to which they are required by any provision of the Customs or Excise Acts to be satisfied (*e*) that any ship is a British ship or (*f*) that any goods thrown overboard, staved or destroyed were so dealt with in order to prevent or avoid seizure of the goods, shall, until the contrary is proved, be sufficient evidence of the matter in question. Moreover, under s. 290 (2), whenever the Commissioners, a law officer of the Crown or an officer is concerned in any proceedings relating to Customs and Excise either as prosecutor or defendant, then, in connexion with questions arising on the matters set out in that subsection, the burden of proof is shifted to the other party to the proceedings.

Apart from these general questions of evidence, the Act also contains many provisions as to the evidence required in connexion with specific offences. It is also interesting to note that in any proceedings for non-payment of duty or non-compliance with any condition, whether such proceedings are for an offence or for condemnation under sch. VII of the Act, then the fact that security has been given by bond or otherwise for such payment or compliance is no defence (s. 286 (3)).

These proceedings for condemnation may occur whenever articles are seized which the Act specifies as being liable to forfeiture. In such cases, the Commissioners are compelled, with certain exceptions, to give notice of seizure to the owner, and any person claiming the articles is then required, within the time specified in sch. VII, to give notice of his claim, and also particulars of his name and address, in writing to the Commissioners. If, however, the claimant is outside the United Kingdom, he has, in such notice, to specify the name and address of a solicitor in the United Kingdom (or advocate in the Isle of Man) who is authorized to accept service of process and to act on his behalf. Service of process on such a solicitor will then be deemed to be proper service on the claimant.

The Commissioners then take civil proceedings for condemnation by a court which can be (*inter alia*) a court of summary jurisdiction in England, Wales or Northern Ireland or a Sheriff Court in Scotland. Such proceedings can be taken in the court having jurisdiction (*a*) where the offence was committed or in which proceedings have been instituted (*b*) where the claimant resides, or, if the claimant has specified a solicitor as aforesaid, where such solicitor's office is situate or (*c*) where the article was found, detained or seized, or where it is first brought after being so found, detained or seized.

The claimant or his solicitor must, in proceedings in England (including the Isle of Man), Wales or Northern Ireland, first make oath that the thing seized was, or was to the best of his knowledge, information and belief, the property of the claimant at the time of seizure. If this is not done, judgment must be given to the Commissioners. If the thing seized is alleged to be the property of a body corporate then this oath must be made

by the Secretary or some duly authorized officer, if the property of two or more partners, by any partner, or if the property of any number of persons exceeding five and not a partnership, by any two of those persons. It should also be noted that the fact, form and manner of seizure shall be taken to have been as set forth in the process without further evidence thereof, unless the contrary is proved.

By s. 280 (1), in such condemnation proceedings, if judgment is given for the claimant, the court may, if it thinks fit, certify that there were reasonable grounds for the seizure. If this occurs, then, in any proceedings in connexion with the seizure, whether civil or criminal, brought against the Commissioners, a law officer of the Crown, or any person authorized under the Act to seize or detain anything as liable to forfeiture, the plaintiff or prosecutor is not entitled to damages or costs and the defendant is not liable to any punishment. This is, however, without prejudice to the right of anyone to the return of the thing seized or to compensation in respect of its destruction or of any damage to it. Moreover, in England, Wales or Northern Ireland, either party can appeal to quarter sessions against the adjudication of the court, in condemnation proceedings and, in any case, there is the usual right of appeal by way of Case Stated (special provisions, however, apply in the Isle of Man—*see* sch. VIII). Pending appeal, the thing seized must be left with the Commissioners or at a convenient office of Customs and Excise.

If an information is laid on oath before a justice of the peace by an officer of Customs and Excise that reasonable grounds exist for suspecting that anything liable to forfeiture is kept in or concealed on any premises, then the justice can grant him or any other person named therein a warrant to search the premises. If entry is, however, made in the night a constable must be present. Similarly a warrant can be granted to a constable where there are reasonable grounds to suspect that a still, vessel, utensil, spirits or materials for the manufacture of spirits is unlawfully kept in any premises (s. 296).

It is also noteworthy that where an officer or person acting under his directions has authority under s. 298 of the Act to search any person, then, if the person to be searched objects, he can be taken before a justice of the peace who must then consider the grounds for suspicion and direct whether or not a search shall take place.

One important change made by the Act is in connexion with the granting of occasional licences. Now, under s. 151, such a licence can be granted in Great Britain for a period not exceeding three weeks and in Northern Ireland for a period not exceeding three days at one time. The licence is granted for between such hours as may be specified being in England and Wales not earlier than sunrise nor later than 10 *p.m.*, except upon the occasion of a public dinner or ball. A licence cannot be granted for a Sunday, nor, in England, Wales or Northern Ireland on Christmas Day, Good Friday or any day of public thanksgiving or mourning, and, in any case, the petty sessional court must withhold its consent to the granting of such a licence unless it considers it expedient for the convenience and accommodation of the public.

Also repealed by the Act is s. 83 of the Finance (1909-10) Act, 1910. The relevant provisions are, however, re-enacted in s. 156 of the new Act, including the duty imposed upon the clerk by whom a register of clubs is kept to send to the Commissioners notice of the entry of any new club on the register or of any club which ceases to be registered.

RIVERS (PREVENTION OF POLLUTION) ACT, 1951: STORM WATER

[CONTRIBUTED]

During the passage of the Rivers (Prevention of Pollution) Bill through Parliament, attention was drawn to the difficulties facing local authorities and others if storm water outfalls were to become subject to the Act to the same extent as other effluents.

Now the Act has come into force, consideration must again be given to this question.

Section 7 (1) renders it unlawful for any person without the consent of the river board (which consent shall not be unreasonably withheld) to bring into use any new or altered outlet for the discharge of trade or sewage effluent to a stream, or to begin to make any new discharge of trade or sewage effluent to a stream.

The expressions "new or altered outlet" and "new discharge" are defined in s. 7 (8) of the Act, and for the purpose under consideration these definitions are immaterial.

Turning to the interpretation of the term "trade effluent" contained in s. 11 (1) of the Act, it is found that surface water and domestic sewage are excluded. Under the same sub-section "sewage effluent" includes any effluent from the sewage disposal or sewerage works of a local authority. This interpretation merely extends (by inclusion) the common meaning of the term "sewage" which, in turn, has relation to the meaning of the word "sewer".

"Sewage," in its ordinary meaning, surely means such matter as is carried in or conducted through a sewer and this latter word comes from the word to "sew" or drain; reference to *Stroud's Judicial Dictionary* reveals that in *Cowel's Interpreter*, "sewer" means a passage or gutter to carry water into the sea or a river and *Stroud* also states that, broadly speaking, and as most frequently used, "sewer" means the duct that carries away the sewage of more houses or other buildings than one; as contrasted with "drain," draining only one. In *Wilkinson* v. *Llandaff and Dinas Powis R.D.C.* (1903) 68 J.P. 1, "sewer" is held to include an open channel or surface water drain alongside a public road and taking surface water from the road and rainwater from abutting houses.

It seems, therefore, in these circumstances that the term "sewage effluent" in the Rivers (Prevention of Pollution) Act, 1951, includes not only effluent from the sewage disposal or sewerage works of a local authority, but also storm water carried through a drain, and that, where it is proposed to effect a new discharge to a stream or to construct a new outlet containing storm water, application must be made for the consent of the river board; and the river board may grant their consent subject to reasonable conditions.

Moreover, if such consent is not sought, the river board may, under s. 7 (4), serve a notice imposing such conditions, and by s. 7 (13) the river board may prosecute, without the consent of the Minister of Housing and Local Government, where a new or altered outlet is brought into use or a new discharge is made without obtaining the consent of the river board, or without observing any conditions imposed by the river board. Examples of cases where a river board might think it necessary to impose conditions with respect to a storm water effluent are where such water is entering a stream immediately after passing over ground contaminated with ash from a generating station or oil from a garage or workshop.

THE TOWN AND COUNTRY PLANNING BILL, 1952

The Government have produced their Bill to amend the Act of 1947 and it has been presented to the House of Commons by Mr. Macmillan supported by Mr. Chancellor of the Exchequer —Mr. Secretary Stuart and Mr. Marples. The Bill follows the recent White Paper (Cmd. 8699) on the Amendment of the Financial Provisions of the Act of 1947.

The White Paper in its introduction stated that the Financial Provisions of the Act in operation had attracted wide criticism and that the experience of four years had revealed serious practical difficulties in their working. The legislation of 1947 was an attempt to solve the problem of compensation and betterment. Before 1947 local authorities feared to control the use of land because they felt that they would be faced with claims for compensation which they could not afford in consequence and although in theory they were entitled to recover a proportion of the increased value accruing elsewhere (betterment) this did not work out in practice.

The solution intended by the Act of 1947 was to pool the development values of all land by transferring them to the State and to make developers pay a development charge which represented in effect the cost of buying back from the State the development value in respect of the development permitted. This system had three main features :

(*a*) No development without planning permission. If permission was granted then a development charge had to be paid.

(*b*) Payment by July, 1953, out of a £300 million Fund for loss of development rights. No compensation except for special cases when planning permission was refused.

(*c*) The price at which land was bought compulsorily was its " existing use " value, *i.e.*, development value was excluded.

The Government intend to maintain full planning control but have decided that they can get rid of some of the worst difficulties of the Financial Provisions of the 1947 Act. In Part II of the White Paper some of those working difficulties are dealt with including the dangers of inflation which would follow wholesale payment of the claims against the global fund of £300 million before July 1, 1953. Such payments would include many to undeserving cases, *e.g.*, those owners who do not want to sell or develop or those who have bought their land for the express purpose of stopping development. In this part of the White Paper the reference is made to the deterrent effect on the market in land caused by the theory of the 1947 Act under which all transactions in land should take place at or around existing use value. Private developers, in particular, have been greatly impeded through being unable to obtain land for development at prices which take sufficient account of their liability to development charge.

The intention of development charge was to secure for the nation increases in the value of land due to planning decisions (*e.g.*, refusal of planning permission) or public improvements so that they could be set off against the cost of compensation and at the same time do justice as between those who were allowed to develop their land and those who were not. However, the theory that the person who pays the development charge is merely buying from the community the development value which he would otherwise have had to buy from the landowner has not worked. In practice purchasers of land identify the potentialities of the site with the land itself and pay the owner a high price for a good site. After that they regard the Central Land Board activities in the collection of development charge not as selling the nation's development rights in the land but as a species of burdensome tax collection by the state. Another objection to the development charge is that the basis of its assessment is uncertain and can bring about distorted results.

The Government go on to indicate in their White Paper that they have examined a number of possible modifications including deferred payment of development charge, exemption of particular classes of development, and reduction in the rate of development charge. However, they conclude that no sufficient improvement can be achieved by modification and propose to adopt more radical alterations.

They propose :

(1) To abolish development charge altogether.

(2) Not to pay out the £300 million Fund, but (with certain exceptions) to pay compensation for planning restrictions as and when development of land is prevented or severely restricted.

(3) To use the once for all reckoning of the 1947 Act as setting the upper limit of compensation payable for loss of development value.

The essence of the Government proposals is to turn the " payments of depreciation " into compensation payments which will not be made until loss is actually sustained. They intend to pay for loss of development value up to 100 *per cent.* of the claims admitted by the Central Land Board as qualifiying for payment from the £300 million Fund. This will apply to compensation for compulsory purchase as well as to compensation for planning restrictions. In other words compensation will be paid for loss of development value up to the 1947 position. If loss of post-1947 development value were to be compensated then the cost of compensation for restriction might be crippling and the effective planning of land use might be prevented.

In Part IV of the White Paper are set out the miscellaneous considerations involved. Amongst these are included various technical and transitional problems. Prominent amongst these are those claims for loss of development value which, being transmissible by assignment or by operation of law as personal property, may be in separate ownership from the interest in land to which they relate. Under the Government's proposals the right to compensation must run with the land. In cases of severance of land into smaller units claims will have to be apportioned in order to provide each unit with its appropriate compensation. Another difficulty lies in preventing compensation being paid in cases where the owner applies for planning permission but has no present intention—perhaps even no desire—to develop his land. Sometimes the proposals will be only premature—development would not naturally have taken place until later ; sometimes, as where the land is held for recreational purposes or to protect the amenities of adjoining property, it may be wholly fictitious. In the fictitious cases it may be possible to grant the planning permission ostensibly sought in which case no difficulty arises. Otherwise it will be arranged that no claim for compensation shall lie when planning permission is refused on the exclusive grounds that development would be premature. The Government's objective is to ensure that payment should only be made as and when real loss is sustained. The White Paper goes on to deal with various other technical and transitional considerations, all of a more or less complicated nature and points out that it is impossible to make an accurate estimate of the cost of the new proposals and to compare it with the cost of carrying out the present Acts.

The Government indicate that due to their desire to allow ample time for discussion of their proposals and to the need for examination of the technical difficulties inherent in them, it will not be possible to introduce the main Bills (English and Scottish)

embodying the new system of compensation before the autumn of 1953. The interim Bill (of which detailed particulars are set out below) has three main objectives :

(1) To abolish the liability to development charge in respect of future schemes of development.

(2) To remove the obligation upon the Treasury under the 1947 Act to distribute the £300 million Fund.

(3) To make the approval of the Central Land Board necessary to assignments of claims on the £300 million fund after the date of introduction.

[The effect of deferment of the main Bills until next Session means that it will not be possible to start making payments until the autumn of 1954].

The Town and Country Planning Bill, 1952, is, therefore, a short Bill comprising four sections and it may aptly be described as a " holding " Bill pending the promised legislation after the autumn of 1953.

Clause 1 of the Bill provides that subject to cl. 3 of the Bill, *supra*, Part VII of the Act of 1947 (which relates to development charges) shall not apply and shall be deemed never to have applied to operations begun on or after November 18, 1952, or to uses of land instituted on or after that date. There is no definition of the expression " operations " in the Bill but presumably this expression is to be construed in the same way as " building operations " in s. 119 of the Act of 1947.

In cases where a development charge has been determined before November 18, 1952, or where an application has been received by the Central Land Board for the determination of charge but has not been determined all operations and uses covered by the determination or application shall be deemed for the purposes of such clause to have been begun when the first operation so covered was begun or the first use so covered was instituted (cl. 1 (2)).

Where a determination of development charge was made under s. 72 (2) of the Act of 1947 so as to cover a specified period only, the continuance of that use of land after that period shall be deemed for the purposes of the Section to be the institution of a new use (cl. 1 (3)). Where buildings or works are authorized by planning permission granted for a limited period only being a period expiring on or after November 18, 1952, Part VII of the Act of 1947 shall not apply and shall be deemed never to have applied to the extention of the buildings or works after that period.

The expression " planning permission granted for a limited period only " includes a permission which before July 1, 1948, was granted under a planning scheme or under an interim development order subject to conditions (in whatever form) restricting the period for which buildings or works might be retained on land (cl. 1 (4)).

By sub-cl. (5) of d. 1 any sum paid before the Act by way of development charge which having regard to the above provisions ought not to have been paid shall be repaid out of moneys provided by Parliament. Clause 2 makes provision as to payments for depreciation of land values. By sub-cl. (1) the payments directed to be made by s. 58 of the 1947 Act shall not be made and repeals that section together with ss. 65, 66, and 68 of the 1947 Act (so far as they relate to payment under schemes).

There are a number of provisos to this sub-clause :

(*a*) Claims for such payments made to the Central Land Board under the Act of 1947 shall be satisfied in such a way *as may hereafter be determined by an Act of Parliament passed for the purpose*.

(*b*) Pending the coming into force of such an Act ss. 60 to 64 of the Act of 1947 (which relates to the establishment of such claims and the transmission of the rights to which they relate) and any regulations made or instruments executed before the passing of this Act for the purposes of the sections shall have effect as if (1) the preceding provisions of the clause had not been passed but (2) provision had instead been made by this clause for postponing the date for the satisfaction of the payments until such date as Parliament might thereafter determine.

Sub-clause (2) of cl. 2 describes that the proviso the s. 64 (2) of the Act of 1947 (which provides for invalidating assignments unless notice is given to the Central Land Board) shall not apply and shall be deemed never to have applied to any assignment affecting a claim mentioned in sub-cl. (1) (*a*) of the clause being an assignment made on November 18, 1952, but subject to sub-cl. (3), *infra*, no such assignment shall be of any effect until it has the written approval of the District Land Board.

Clause (3) imposes a duty upon the Central Land Board in exercise of their powers under sub-cl. (2), *supra*, that they shall act with a view to securing that any such claim made in respect of an interest in land ensures wholly for the benefit of some person having an interest in all that land or to the appropriate extent for the benefit of some person having an interest in part only of land :

Where any assignment either :

(*a*) only operates to transfer the beneficial interest in a claim made in respect of an interest in land to the person beneficially entitled to that interest or to some interest in which that interest has merged ; or

(*b*) does not operate to transfer any beneficial interest in the claim the approval of the Central Land Board shall not be necessary if, whether before or after the passing of this Bill, written notice of the assignment is given to the Board within one month from the date from its making or from the date of the passing of the Bill whichever is the last.

Clause 3 of the Bill makes a series of savings and special provisions :

(1) The proviso to s. 22 (1) of the Act of 1947 (which provides that compensation for the revocation or modification of permission to develop land shall not be payable in respect of any depreciation in the value of an interest in land unless either a development charge has been paid or, by virtue of the provisions of Part VIII of that Act no such charge is payable.

(Part VIII of the Act relates to special cases, *e.g.*, where planning permission is granted for the continuance of any use contravening previous planning control (s. 75 (7)) or land ripe for development before July 1, 1948 (s. 80)).

(2) Section 51 (4) of the 1947 Act (which provides that compensation on compulsory acquisition shall be calculated as if certain planning permission had not been granted, unless either development charge has been paid or by virtue of any of the provisions of Part VIII (special cases, *supra*) as such charge is payable.)

Shall have the same operation as they would if cl. 1 of this Bill (which abolishes development charge for development commenced on or after November 18, 1952) had not passed and development charges had been payable accordingly, and accordingly :

(*a*) The references in the said provisions to cases where a sum has been paid by way of development charge shall be deemed not to include references to cases where a sum has been paid by way of development charge but by virtue of s. 1 of the Act this sum has been or falls to be repaid.

(*b*) The references in the said provisions to cases where by virtue of any of the provisions of Part VIII of the 1947 Act no

development charge is payable shall be deemed to include references to cases where if s. 1 had not been passed a development charge would not have been payable but for some provision of the said Part VIII or the said Part VII.

The object of this clause is to avoid anomalies which would otherwise arise in the period before further legislation for the amendment of the financial provisions of the Acts can be passed. The clause provides that cll. 1 and 2 of the Bill shall not affect the compensation payable in certain cases when a planning permission is modified or revoked or when land is compulsorily acquired and shall not affect the wording of the Mineral Development Charge (set-off) Scheme.

It preserves the powers of the Central Land Board to buy land which they have contracted to buy or are in the process of acquiring under a Compulsory Purchase Order (cl. 3 (2)).

The clause also suspends certain provisions relating to the compensation payable in respect of a grant of mineral working rights (cl. 3 (3)) and relating to the modification of mining leases (cl. 3 (4)).

The abolition of development charges by cl. 1 has made these provisions inapplicable.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Singleton, Denning and Hodson, L.JJ.)

BARTHOLOMEW *v.* BARTHOLOMEW

November 17, 1953

Divorce—Desertion—Constructive desertion—Wife dirty in her person and in the matrimonial home—No inference of intention to drive husband away.

APPEAL by wife from an order of Mr. Commissioner GRAZEBROOK, Q.C., granting a decree *nisi* of dissolution of the marriage on the ground of desertion by the wife.

In December, 1945, the husband returned from war service and complained of the dirty condition in which the wife was keeping herself, the matrimonial home, and the children, and in March, 1946, he left, telling the wife that, if she failed to effect an improvement, he would not return. He complained that she failed to improve the conditions, and he refused to return to her. On a petition by him for divorce on the ground of constructive desertion,

Held: the fact that a wife was dirty in her person and her home was not of necessity evidence which showed that she wished to bring the matrimonial consortium to an end; she might be dirty because she was lazy or lacked energy; the conduct of the wife in the present case was not of such a grave and convincing character as to show an intention by her to drive the husband away from the matrimonial home; and, therefore, she was not guilty of constructive desertion.

Dictum of Lord Greene, M.R., in *Buchler* v. *Buchler* (1947) (111 J.P. 179), *applied*.

Winnan v. *Winnan* ([1948] 2 All E.R. 862), explained and distinguished.

Counsel: *J. C. Mortimer* for the wife; *R. B. Willis* for the husband.

Solicitors: *H. H. H. Wiggett* for the wife; *Gush, Phillips, Walters & Williams*, agents for *Knocker & Foskett*, Sevenoaks, for the husband.

(Reported G. F. L. Bridgman, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Lord Merriman, P., and Davies, J.)

KENDALL *v.* KENDALL

October 28, 29, 1952

Husband and Wife—Maintenance order—Persistent cruelty—Subsequent inconsistent finding of High Court on same facts—Right of husband to discharge of order.

APPEAL by husband against the dismissal by North Riding of Yorkshire justices sitting at Easingwold of his application to discharge an order made in favour of the wife by the justices on September 13, 1944, on the ground that the husband had been guilty of persistent cruelty to her.

On September 13, 1944, the wife obtained an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, on the ground of the husband's persistent cruelty. On August 2, 1951, she filed a petition for divorce, setting out substantially the same allegations of cruelty. On March 24, 1952, this petition was dismissed by a divorce commissioner who found that the allegations of cruelty were not proved. On a summons by the husband to discharge the order of September 13, 1944,

Held: the decision of the justices was effective for the purpose for which it was applied, but the finding of the High Court on the same facts was conclusive, and, therefore, the order of the justices could not stand and must be discharged.

Pratt v. *Pratt* (1927) (96 L.J.P. 123), applied.

Appeal allowed.

Counsel: *Parris* for the husband. The wife did not appear.

Solicitors: *Kenneth Brown, Baker, Baker*, agents for *H. E. Harrowell, Brown & Bloor*, York, for the husband.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 104.

SMOKERS, BEWARE!

A man was charged at Blackpool Magistrates' Court on November 28, 1952, with selling tobacco without a licence contrary to s. 13 of the Tobacco Act, 1842, as amended by s. 8 of the Revenue Act, 1867. He was also charged with having in possession certain tobacco in which there was found, on examination, a substance other than water contrary to s. 3 of the Tobacco Act, 1842.

Counsel, who prosecuted for the Commissioners of Customs and Excise, opened the case by stating that it was in many ways a most unusual case and certain features would appear to be fantastic if they were not true.

In February of this year defendant wrote to the Commissioners about a tobacco licence for mail order selling, asking if one was necessary and requesting that the regulations governing the matter should be sent to him. He was sent an application form, which in fact, was found on his premises in August.

In May, an Excise Officer in Wales reported that a man, who later turned out to be the defendant, although giving a different name, was offering tobacco to a trader in Wales and that there seemed something doubtful about the nature of the tobacco. The tobacco was analysed but there was no evidence of any substance other than tobacco; the smell, however, suggested that it was obtained from cigarette ends.

Following a further letter from defendant, a Customs Officer went to his premises in May and asked him the source of his tobacco, but the latter said he would prefer not to say and added that he had written to the Commissioners about herbal smoking mixture. Defendant later sent three samples of tobacco—reclaimed as he called it—which on analysis was found to contain an admixture of coltsfoot, red clover and straw. In June, defendant was again visited and asked to state the source of the tobacco he contemplated selling, and he then said that it came from sweepings from various Preston cinemas. The Customs Officer, who was rather taken aback, asked defendant how much he had recovered and the latter said "Only two or three pounds." This statement, said Prosecutor, was untrue, because he had been selling tobacco to a trader in Wales in considerable quantities and had been sending it to him in parcels. Later inquiries elicited the fact that over a period of time during which defendant had no licence to sell tobacco, he sold to the trader in Wales 110*lb.* which amounted to £155 in money.

Defendant then disappeared from his address in Preston, but was later traced in August to a room at Blackpool, and when an Excise Investigation Officer walked in after knocking at defendant's door, the latter tried to prevent him. In the room were a number of cartons containing floor sweepings which consisted largely of cigarette ends. There was also a gas ring and a colander and four metal sieves, and some boxes containing cigarette ends. The latter were in the process of being sorted and stripped of paper and a box containing 6*lb.* of

what was called cleansed tobacco was seized. Defendant said the cigarette ends were sweepings from Blackpool and Preston cinemas, and explained his method of sterilizing tobacco by putting it in a colander and steaming it on a saucepan. The tobacco contained tobacco ash, cigarette paper, various seeds and pyrolle, a substance with an extraordinarily bad smell. It was noxious like burning whale oil, which could never be allowed to be in tobacco, and the chemist who was analysing the tobacco was so overcome by the smell that it was almost impossible for her to continue the analysis.

Prosecutor said that it was fair to add that defendant had tried to be helpful in the inquiries which were made.

Defendant, who told the court that he did not know what pyrolle was, or how it had got into the tobacco, apologized for selling the reclaimed tobacco and said he was trying to get on his feet.

Defendant was fined £5 upon the first charge and £50 upon the second, and the Chairman stated that the Bench regarded the case as a very serious one.

COMMENT

The writer has included this report with some little hesitation, for it is hard to imagine anything more calculated to deter a smoker than the knowledge that there is a possibility that the tobacco he is smoking has been swept up in the form of a cigarette end off the floor of some cinema ! Section 3 of the Tobacco Act, 1842, provides that every manufacturer of, dealer in, or retailer of tobacco, who shall have in his possession, or sell, any tobacco in which there is found on examination any other material, liquid, substance, matter or thing, other than water, shall forfeit £200.

Section 13 of the same Act under which the first charge against the defendant was laid prohibits anyone from selling or offering for sale any tobacco unless licensed so to do, and for all tobacco found in the possession of an offender to be forfeited. The section also provides for a penalty of £100, but gives power to a court to mitigate the same.

The writer is greatly indebted to Mr Clifford F. Johnson, clerk to the Blackpool Justices, for information in regard to this case.

R.L.H.

No. 105.

A DISHONEST BUTCHER

A Newport butcher and his wife were jointly charged at Newport Magistrates' Court recently, with doing an act preparatory to the commission of an offence against the Meat (Prices) (Great Britain) Order, 1952, namely the offence of selling a joint of meat at a price exceeding the maximum price in that they prepared and issued for use in connexion with the sale of the said meat an additional invoice showing that the said price was the price to be charged therefor, contrary to art. 3 of the said order. The defendants were also charged with fifteen similar offences in respect of other joints of meat.

For the prosecution, it was stated that the defendants had been operating a " double ticket system." The system, said the prosecutor, was for two tickets to be prepared for each joint of meat. One of the tickets indicated the correct price and was placed on the meat until just before it was served to a customer. Immediately before the meat was delivered a different ticket bearing a price which was in excess of the maximum price, was placed on the meat. The double system was easy to operate, said the prosecutor, and was a deliberately dishonest practice.

In July last, three enforcement inspectors from the Ministry of Food watched the delivery man of a meat van, and saw the man take a ticket from one of his pockets marked " Pork 5*s.* 6*d.*" and place it on the meat after removing another ticket marked " 4*s.* 3*d.*"

The defendants pleaded guilty to all charges and were each fined £1 on each of sixteen charges, and were each ordered to pay £1 1*s.* costs.

COMMENT

The Order of 1952 follows previous similar orders but increases the price for most cuts of meat.

Article 3 prohibits any person from selling or buying meat at a price exceeding the maximum price applicable in accordance with the schedules to the order, and art. 12 provides that infringements of the order are offences against the Defence (General) Regulations of 1939.

The writer is greatly indebted to Mr. R. J. Rowlands, clerk to the Newport County Borough Magistrates, for information in regard to this case.

R.L.H.

PENALTIES

Monmouth Assizes—November, 1952—arson—eighteen months' imprisonment—defendant, an unemployed youth of twenty, set fire to a Church. He asked for two other offences of arson which had caused damage amounting to £1,000 to be taken into consideration. Defendant to undergo treatment whilst in prison.

Glasgow High Court of Justiciary—November, 1952—assaulting a man with a razor—four years' imprisonment. Defendant, a woman of twenty-two, whose previous record was good, slashed a man in a restaurant on the cheek.

Portsmouth—November, 1952—(1) unlawfully procuring morphine tablets (four charges), (2) failing to keep proper records—fined £50 on each charge and to pay £5 5*s.* costs—defendant a forty-five year old doctor was stated to have acquired a taste for morphine after taking it in a perfectly proper way to deaden the pain of a broken ankle.

Bow Street—November, 1952—assaulting the licensee of a public house—six weeks' imprisonment.

Edinburgh—November, 1952—assaulting a footballer by spitting at him. Fined £2.

REVIEWS

Halsbury's Statutory Instruments. Volumes 10, 11 and 12. London : Butterworth & Co. (Publishers) Ltd., 1952. Price 29*s.* net per volume. Service £4 4*s.* a year.

These three volumes cover the statutory instruments from Gas to Local Government inclusive. Volume 10 stops at July 16, 1952, and the other two at September 1. Such differences in dates are unavoidable while a work of this type is progressively brought out, and is not detrimental to its usefulness, because each time-lag is caught up quickly by the " Service." Whatever happens as the result of the Parliamentary inquiry now proceeding, into the system of legislation by statutory instruments, it is certain that the system itself will remain. Uninstructed critics may object, in language reminiscent of that used by Lord Hewart nearly thirty years ago, to the enactment otherwise than by Parliament itself of provisions which are to have the force of law, but, as Sir Cecil Carr has shown conclusively in a recent broadcast, it would be impossible without statutory instruments to carry on the ordinary business of government, as the public now expects it to be carried on.

It is, therefore, more important, with every year that passes, to possess a full set of these enactments and also (for practical purposes) to possess a set which has been properly annotated and cross-noted. We make this latter point because there is now in existence machinery for supplying the public with an official issue of the statutory instruments, which will be up to date. We do not in any way decry this official publication, which indeed we warmly welcomed on its first appearance, but, with the ever growing complication of the subject matter, it is hardly enough, for the practitioner whose time is valuable, to rely upon the text alone of the statutory instruments. Under the heading of Gas, for example, in the volumes now before us there are instruments shown as being still in force reaching from 1942 to 1951. Many of these are not printed in the present volume, for the reason explained at p. 6 of the preliminary note ; the lawyer or accountant who attempted to trace provisions which concern him might lose much time if he were obliged to wade through several pages of provisions which do not concern him.

It may again be rather surprising to road users to discover that there are statutory instruments relating to highways, which cover some fifty pages of vol. 10. These are divided under the headings of Roads, London Traffic, and Bridges. The chronological list includes thirty-six entries, with a whole page of cross-references to other parts of the work, which will be found a great saver of time to those concerned. Particular attention may be drawn to the preliminary notes to this part of the book, explaining its scope, and the function of the cross-references. The statutory instruments relating to housing are even more voluminous ; these go back to 1919, when regulations were made dealing with financial assistance to housing trusts. They end (for the present) with regulations made in 1952 governing rates of interest.

Under the heading " Husband and Wife " there is given a tripartite division between marriage, matrimonial causes, and maintenance orders. Here again the law embodied in statutory instruments is a good deal more voluminous than might be expected at first sight, and the provisions printed go back more than fifty years. There is also a very large number of orders applying the Marriage of British Subjects (Facilities) Act, 1915, to overseas territories. The list of these, which it has not been necessary to print *in extenso*, will often be handy to the practitioner, particularly in remoter places where he may be suddenly faced with a problem arising from a marriage overseas.

Volume 11 is confined to two titles, Income Tax and Infants. The statutory instruments relating to income tax cover 160 pages of the book and thirty years in time ; a good many relate to double taxation, and arise out of arrangements made with foreign countries, and will thus be of interest only to the limited number of persons who have

income arising in those countries, but there are some which are of interest to every tax-payer. The second half of the volume deals with such matters as the adoption of infants, institutions, and child care; the employment of infants, and legal proceedings in which infants are involved. This will be of special value to our magisterial readers and also to those officers of local authorities who are concerned with adoption or with the care of children.

Volume 12 embodies a miscellaneous bag of provisions—namely Insurance, Intoxicating Liquor, Juries, Land Tax, Landlord and Tenant, the Lands Tribunal, and Local Government. Every one of these topics is of special interest to some of our own readers. The Lands Tribunal Rules, 1949, and other provisions relating to the Lands Tribunal included in this volume are likely to be of increasing importance as time goes by. The general heading "Local Government," falls into several sub-divisions (namely Appointed Days and Applications; Powers of Local Authorities; Finance; Office and Officers; and Alterations of Areas). There is nothing here but what is of great importance to a large number of our own readers.

In examining these volumes we are once more struck by the clarity and convenience of the arrangement. Each of the main headings is preceded by a chronological list of instruments; in association with this there is a full apparatus of cross-reference to parallel matters dealt with elsewhere in the work. The arrangement is already familiar to readers who have used *Butterworths Emergency Legislation Service*, but is worth mentioning again, as being a feature which is peculiarly useful for tracing not merely the instruments printed in the work but those which it has not been found necessary to print. The work thus serves as a reasoned catalogue of statutory instruments on every topic, not merely those which are actually reproduced; with the aid of these lists and indexes the possessor of the work can go quickly to the official publication of statutory rules and orders and statutory instruments and find any provision he requires, if it is not among those here printed. It will, however, be found that the selectors of matter to be included in this work have brought in everything (in the way of a statutory rule, order or instrument) which is likely to be required in every day work in any subject. It has long been a reproach to English law that it is both voluminous and inaccessible. Despite much wishful thinking, its volume seems unlikely to diminish (apart from the process of sweeping away temporary wartime provisions), but the present work and some others produced in recent years have gone far towards removing the reproach that the working law is inaccessible.

Detention in Remand Homes. A Report of the Cambridge Department of Criminal Science on the use of section 54 of the Children and Young Persons Act, 1933. Edited by L. Radzinowicz, LL.D., and J. W. C. Turner, M.C., M.A., LL.B. London: Macmillan and Co., Ltd., St. Martin's Street. Price 12s. 6d. net.

This is Volume VII in the English Studies in Criminal Science published by the Department of Criminal Science, Faculty of Law, University of Cambridge. It is an exhaustive investigation into a subject which is of interest to juvenile court magistrates and others concerned in the treatment of juvenile offenders.

As a matter of fact the use of a remand home as a place of detention for punishment does not meet with general approval, and the number of offenders so dealt with is relatively small. Many magistrates feel that there is some objection to such a use of remand homes, which are established for safe custody of juveniles, including many who are not offenders, during adjournments, and which are not designed to be places of punishment. That is one reason why the introduction of detention centres as places of punishment has been welcomed. So far as young children are concerned, remand homes will continue to be used occasionally where it is thought that separation from home and parents may prove effective as a punishment.

The book shows all too plainly that the use of s. 54 has not produced encouraging results. A Home Office Circular dealing with the book says: "The conclusion that over fifty *per cent.* of all the offenders in the group studied were subsequently found guilty of an indictable offence emphasizes the need for the greatest care and caution in selecting children and young persons for this form of treatment." The same circular quotes from the book the opinion, which we share, that as at present used, remand homes do not appear to be suitable places of detention for this group of offenders. Detention centres, it is hoped, will provide a partial remedy.

The work is compiled with the systematic thoroughness that characterizes this series. Just one statement has rather surprised us. On p. 37 it is said that many offenders charged with breaking in are also charged with stealing from the place they had entered, and that when a young offender is found guilty on both charges, it is usual in certain areas for the court to make a detention order on one charge and a probation order on the other. Where the breaking and entering and stealing constitute a single incident, surely it cannot be right to make two charges of it, and we have never known it done.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

SALE OF TOY WEAPONS

Earl Howe asked the Government in the House of Lords whether they were in favour of the sale of coshes, stilettos and other weapons to children, and what steps they proposed to take to deal with the question.

The Lord Chancellor, Lord Simonds, replied that the sale of offensive weapons, and of toy facsimiles of such weapons, to children had recently occasioned criticism in many quarters. It was a question which raised a number of difficulties, and he could not say more than that the Home Secretary was considering various suggestions which had been made to him in the matter and that he hoped to be in a position to make a statement in the near future.

In the Commons, Mr. Maurice Edelman (Coventry N.) asked the Secretary of State for the Home Department whether his attention had been drawn to the public sale of imitation weapons which were capable of being converted into lethal arms; and what action he was taking to prevent that stimulus to violence.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, replied that he was aware there was some public anxiety about the sales of certain types of toy. Any proposal to prohibit their sale raised considerable difficulties, but he was carefully examining the matter.

Mr. Edelman: "Does not the right hon. and learned Gentleman agree that these potential weapons are certainly not playthings, and would he not, meanwhile, give guidance to the public by declaring their sale as being contrary to public policy?"

Sir David: "I have had an admirable voluntary response from the trade on this matter, and I think that the sales of a great number of these things have been greatly reduced; but I am quite unrepentant in the view that to prevent a small boy from having a toy pistol is nonsense."

Mr. G. R. Chetwynd (Stockton-on-Tees) pointed out that Mr. S. P. Viant (Willesden West) was to introduce a Private Bill on the matter after Christmas. Would Sir David give general blessing to the objects of the Bill?

Sir David replied that he was quite prepared to consider it.

UNAUTHORIZED FIREARMS

Mr. B. Janner (Leicester N.-W.) asked the Secretary of State for the Home Department if he would introduce legislation to amend the Firearms Act, 1937, so that the maximum prison sentence for anyone purchasing or possessing firearms or ammunition without a firearms certificate should include a longer prison sentence than the present one of three months.

Replying in the negative, Sir David declared that the purchase or possession without a certificate of firearms or ammunition to which Part I of the Firearms Act, 1937, applied was a serious matter, but he had no reason to regard as inadequate the maximum penalties which might be inflicted for that offence.

Mr. Jenner: "Is not the Minister aware that there is a considerable increase in crimes which involve the use of these weapons? Will he not consider imposing a higher penalty on some kinds of the weapons which are referred to in the Act, if not on others, so that people shall be afraid of carrying arms of that sort and thereby be prevented from using them?"

Sir D. Maxwell Fyfe: "I am quite prepared to consider the point, but I remind the hon. Gentleman that ss. 22 and 23 of the Firearms Act prescribe penalties of up to fourteen years' imprisonment for conviction on indictment for the possession of firearms with intent to injure or for their use and possession to resist arrest, and that s. 23 of the Larceny Act provides for a life sentence for the offence of armed robbery."

COMICS AND A CHILD'S DEATH

Mr. Edelman asked the Secretary of State for the Home Department whether he had studied the case of a child in the Midlands, particulars of which had been sent to him, accidentally shot dead by a companion while reproducing a scene of violence observed in an American-style comic; and whether, arising out of that case, he would set up a Departmental Committee of educationists, magistrates and child psychologists to study the effect of such comics on children, with a view to making recommendations for the benefit of parents and teachers.

Sir David replied that he had studied the case and he found that the children in question were not imitating a story they had read in an American-style comic. He had carefully considered Mr. Edelman's suggestion in consultation with the Secretary of State for Scotland and the Minister of Education, and he was not satisfied that the creation of a committee as proposed would achieve the end Mr. Edelman had in view.

In reply to supplementary questions, the Secretary of State said that, so far as the case in question was concerned, and the game was consciously based on any source, it seemed to have been derived from confused recollections of a harmless British comic and a British Broadcasting Corporation programme.

"I have come to the view that reading is primarily a matter for parents, and that parents ought to deal with it" he added, "It is a matter for parental discipline and for public opinion, and I want everyone's help on it."

ADDITIONS TO COMMISSIONS

LINCOLN CITY

Charles Thomas Alderson, 4, James Street, Lincoln.
Bernard Clarke, 10, The Avenue, Lincoln.
Herbert Edward Hough, St. Malo, Sleaford Road, Bracebridge Heath, Lincoln.

MIDDLESEX COUNTY

Harold Beck Williams, Q.C., West Moushill, Milford, Surrey.
Mr. Adelaide Alphons Bell, 212, Staines Road East, Sunbury.
Mrs. Alma Lillian Birk, 27, Wickliffe Avenue, N.3.
Mrs. Violet Grace Collins, 19, Batavia Road, Sunbury on Thames.
Frank Creeke, 44, Ailsa Road, St. Margaret's, Twickenham.
Hubert Handford, 24, Sandringham Drive, Ashford.
Reginald John Knowles, 90, Great North Way, Hendon, N.W.4.
Francis John Marks, 23, Ascot Gardens, Southall.
Leslie Wilfrid McClane, 65, Manor Drive, Friern Barnet.
Neil Muldoon, 22, Beech Drive, Fortis Green, N.2.
Arthur Paul, 160, Montrose Avenue, Burnt Oak, Edgware.
Sydney Pickering, 300, Mutton Lane, Potters Bar.
Mrs. Frances Marian Stowell, 14, Marchwood Crescent, Ealing, W.5.
Alfred Victor Sully, M.C., 60, Downage, Hendon, N.W.4.
Sidney Benjamin Thornhill, 9, Eldon Avenue, Heston.
Cecil McCord Trendall, 40, Station Approach, Sudbury.
Mrs. Mabel Webb, Willow Cottage, Hillside Road, Pinner Hill.
Alfred Woolf, 32, Ambrose Avenue, Golders Green, N.W.11.
Dr. George Robert Hesketh Wrangham, 26, The Avenue, Ealing, W.13.
Leslie Gladstone Bryant, 194, Staines Road, Bedfont, Feltham.
Owen Morgan-Owen, 76, Barnet Way, Mill Hill, N.W.7.
Thomas Taylor Swan, 197 Cannon's Lane, Pinner.

WILTS COUNTY

Lt.-Gen. Sir Thomas Ralph Eastwood, K.C.B., D.S.O., M.C., Vasterne Manor, Wootton Bassett.
Mrs. Agnes Joy Key, South Canonry, The Close, Salisbury.
Reginald John King, St. Leonards, Deverill Road, Warminster.
Robert Lavery, Hargest, 2 Roman Road, Salisbury.
Mrs. Muriel Aileen Palmer, 235, Marlborough Road, Swindon.
Mrs. Brenda Joyce Hughes Shell, 532, Semington Road, Melksham.
Major George William Murray Smith, M.C., Brinkworth House, Brinkworth.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, December 2

PUBLIC WORKS LOANS BILL, read 2a.

Wednesday, December 3

BIRTHS AND DEATHS REGISTRATION BILL, read 1a.

Thursday, December 4

CIVIL CONTINGENCIES FUND BILL, read 2a.
NEW VALUATION LISTS (POSTPONEMENT) BILL, read 2a.

HOUSE OF COMMONS

Monday, December 1

TOWN AND COUNTRY PLANNING BILL, read 2a.

Tuesday, December 2

EXPIRING LAWS CONTINUANCE BILL, read 3a.

Friday, December 5

AGRICULTURAL LAND (REMOVAL OF SURFACE SOIL) BILL, read 2a. 3a.

NOTICES

The next court of quarter sessions for the Isle of Ely will be held at Wisbech on January 7, 1953.

The next court of quarter sessions for the county of Cardiganshire will be held on Thursday, January 8, 1953.

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Monday, January 12, 1953.

The next court of quarter sessions for the borough of Bridgwater will be held at the Court House, Northgate, Bridgwater, on Friday, January 23, 1953, at 10.30 *a.m.*

LEGAL MIS-PRINTS

(1)

What a delightful conclusion—
"This Petition is *now* prosecuted in collusion . . ."

(2)

"When the Decree is made *Obsolete*" it said,
Meaning—perhaps—when the Petitioner has re-wed.

(3)

"*Dissilusion* of Marriage"—not strictly the right name
But perhaps it comes down to much the same.

J.P.C.

THE CAREFUL CLERK

When drawing information, I
Will see that each and all comply,
With ev'ry rule of Law and Sense,
That suitors, seeking recompense
Within my Court—a Court of Law—
Will not be faced with verbal flaw,
To make the summons bad, or void,
And cause the Bench to be annoyed.
On time my Court shall always start;
No late beginning! For my part,
The list of cases I'll peruse
In ample time to be of use.
Not trust to Luck to pull me through,
But be prepared for what to do.
My note, tho' brief, shall ample be,
For any Court of Q.B.D.
And when the Bench, their views to air,
(Or smoke a cigarette "In there")
Retire, I'll sit without a word.
The "Beaks" will find they've "Got the Bird!"
Until the Chairman shall remark,
"Please may we have the pleasure, Clerk?"
Then, rising, I shall pick up *Stone*
Beneath my arm, that ere I've gone,
The Public see, without a flaw,
I deal in nothing but "The Law."
(For "Facts" not Clerks, to Benches speak
O, may their voices not be weak!)
Returns I'll send without delay.
Fine notices, the very day
The fines imposed, I shall dispatch,
The wayward payer quick to catch.
At home, when others' labours cease,
I'll read the *Justice of the Peace*
And Local Government Review,
That I may learn what others do.
A backroom Boy, I'll not aspire,
To set a legal Thames on fire.
My sole reward—O, spare your pity,
To sit upon the Rule Committee!

JAY DUDLEY EE.

THE FUNCTIONS OF A BOROUGH CLERK OF THE PEACE

Although the number of boroughs having a separate court of quarter sessions is now much smaller than it used to be, it was thought that a short article on the functions of a clerk of the peace of a borough would be of interest to the readers of this journal, mainly because it is a subject on which very little is written. The legal basis for the office is mostly contained in the Municipal Corporations Act, 1882, but it is not here proposed to deal too much with details of law as distinct from practice. The subject falls into two main headings, court work and extra-court work, and court work itself must be considered under the headings of preparing for sessions, during sessions and after sessions.

(A) PREPARING FOR SESSIONS

It is the duty of the clerk of the peace to make all necessary arrangements for the holding of the court, making ready the court room, etc., but the fixing of the dates of sessions is a matter for the recorder. The careful clerk will, however, ensure that the recorder is advised of the dates of neighbouring sessions where known, in order that suitable dates may be chosen, and when the dates are fixed, it is the duty of the clerk to publish those dates as widely as possible, for the convenience of all concerned. The authority for the holding of each individual sessions is contained in a precipe signed by the recorder, and this should be sent to him for signature a few weeks before the date fixed for the sessions. When the precipe has been returned signed, the clerk should then arrange for proper notice of the sessions to be published in a local newspaper, and to be exhibited at the court house or town hall.

About three weeks before the commencement of sessions, the clerk should proceed to select his jury, from the register of electors for the borough currently in force (this, it should be noted, comes into force for jury purposes, not on March 15, but on August 15 in every year: Electoral Registers Act, 1949, Sch. 2). The jury summonses should be sent out at least fourteen days before sessions; they may be sent by registered post, or they may be handed to the Chief Constable to serve. The selection of the jurors is not an easy task; in practice, the writer has found it simplest to compile a card index of those qualified to serve, and to record the date of service on each card. By this means, it should be easy to ensure that jurors are selected in turn, and any special directions of the court exempting particular persons for a specified period can be readily noted.

The arrangement of the list for sessions is a matter of considerable importance, if grave inconvenience to all concerned is to be avoided. There is much to be said against the practice adopted in some courts of setting down all cases for the first day, with no indication being given by the court of the order in which the cases are to be taken. Provided a little trouble is taken by the officers of the court, it should be easy to ascertain in advance which cases are expected to be pleas of "guilty," and in which cases there is expected to be a "fight." A provisional list can then be prepared and published several days before the commencement of sessions, with the added advantage that if all the "guilty" pleas are taken in the first day, it should be possible to avoid calling any jurors for that day. Applications from solicitors can be received by the clerk, in accordance with an agreed procedure, for the order of particular cases to be altered, and a final list can then be prepared and published in court.

It is also the responsibility of the clerk of the peace to prepare the bills of indictment, which he will normally do on the advice of counsel for the Crown. All the bills should be signed on the first day of sessions (*see* Indictments (Procedure) Rules, 1933, art. 2), by the clerk of the peace, and any bill, when signed, thereupon becomes an indictment. In a case of difficulty, however, if the clerk is not satisfied that the offence charged in the bill is one which is disclosed on the depositions as there being some evidence against the defendant, and not being one in respect of which the defendant has been committed for trial, it is his duty to refuse to sign the indictment until he has been directed to do so by the recorder (after hearing legal argument): Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 2 (5).

(B) DURING SESSIONS

During sessions, the clerk's duties include the arraignment of the accused, the swearing of witnesses and the jury, and the receiving of verdicts. It is desirable that so far as possible the orders of the court (which must be signed by the clerk) are drawn up in court—in particular probation orders should be handed as soon as possible to the probation officer, in order that he may explain their purport to the defendant and obtain his signature on the back of the order before he leaves the court precincts. Orders for imprisonment, borstal training or corrective training also should be prepared in court and handed to the prison officer on the day of sentence. Solicitors normally appreciate the settlement of cost sheets for the prosecution, and the marking of Crown counsel's briefs, to be effected during the sessions, and this saves a great deal of subsequent correspondence. The indictments must of course be completed in court, and adequate minutes should be taken of the proceedings, in addition to the official shorthand note for which the clerk of the peace must make arrangements, under the Criminal Appeal Act, 1907, s. 16.

(C) AFTER SESSIONS

After sessions, there is a considerable amount of clerical work for the clerk of the peace—the minutes must be written up and the after-trial calendar prepared for the prison governor. Copies of probation orders must be sent to the responsible courts; the commanding officers of soldiers, sailors or airmen convicted should be advised of the sentences of the court; appeal decisions must be notified to the courts below; appeal costs must be taxed (on application by solicitors concerned). Returns of fines must be sworn and forwarded to the Under-Sheriff, and a return also sent to the Auditor of Sheriff's Accounts. Particulars of costs ordered to be paid by defendants should be notified to the borough or county treasurer concerned.

(D) EXTRA-COURT WORK

Most importantly, the clerk of the peace was originally appointed by the *custos rotulorum* for the borough, and as such is responsible for the safe custody of, not only the court books and records, but also the commission of the peace for the borough. The commission must be sent to the Clerk of the Crown in Chancery on request, and when it is returned to the clerk of the peace with a name or names added, it is customarily the duty of the clerk of the peace to arrange for the newly appointed justice(s) to take the Oath of Allegiance and the Judicial Oath, and to notify the clerk to the justices accordingly. Similarly, the clerk of the peace normally keeps a record of the dates of birth of the respective borough justices, in order that he may place a particular individual on the Supplemental List when he reaches his seventy-fifth birthday (*see* the Justices (Supplemental List) Rules, 1950). Further, in many boroughs, it is customary for the clerk of the peace to act as clerk to the Lord Chancellor's Advisory Committee on the selection of justices for the borough. It is the duty of the clerk of the peace also to file with the court records papers duly lodged with him, such as the returns of members of Freemasons' Lodges, required to be prepared annually under the Unlawful Societies Act, 1798. J.F.G.

STUDYING FORM

> "There's a young 'ooman, on the next form but two, as has drunk nine breakfast cups and a half, and she's a-swellin' wisibly before my wery eyes!"

It was at the monthly meeting of the Brick Lane Branch of the United Grand Junction Ebenezer Temperance Association that Mr. Tony Weller uttered these memorable words, during the orgy of tea-drinking that preceded the commencement of business. Although *Pickwick* was written long before the apotheosis of feminine convexity, in the "bustle" of the 1880s, it is clear from internal evidence that already the female form was expected to display a certain generous amplitude. The type most admired in Mr. Pickwick's day was Junoesque rather than sylph-like; Dickens' most attractive feminine characters are the "comfortable" women—healthily robust, buxom and plump. It was not until late Edwardian days that fashion decreed those smooth, severe outlines, culminating in the tubular monstrosities of the 1920s, which demanded the cultivation of the slim and boyish figure still popular today. Unfortunately the art that could be called in aid to accentuate the natural curves is less successful in its efforts to conceal them. Hence the preoccupation of the modern girl with slimming devices of all kinds, with special dieting, exercise, and strange constricting garments, the mysteries of which the male imagination would never conceive of but for the blatant insistence of the advertisers.

It is not easy to find reasons for the fluctuations of taste in this matter. Feminine emancipation has something to do with it, but this cannot be the whole story. Granting that women, since the early days of the suffragist movement, have gradually shaken themselves free of the fetters of masculine domination, and have won full opportunity for self-expression in every walk of life, is it not strange that they should have chosen to develop the more mannish characteristics, and to tone down those which are usually regarded as womanly? Voluptuous curves, before and behind, have given place to willowy suppleness; drooping languidity to vigorous athleticism; the cult of domesticity to business and professional efficiency, and the art of light conversation to the slick cross-talk of the films. The vocabulary of love takes its terminology neither from the frank sensuality of the *Song of Solomon* not from the romantic idealism of Dante, Petrarch and the English Elizabethans, but has invented a wild, unkempt language of its own. The figure of speech called *meiosis*—understatement—is much to the fore: "petting" has supplanted love-making, the "girl-friend" has taken the place of the mistress, and young people no longer fall in love but are "keen on" each other. In ordinary social intercourse it is out of fashion to take seriously any but the most trivial of subjects: the latest and most ephemeral novel or play may be discussed with passionate absorption, but it is simply "not done" to hold and express deep-felt views on ethics, philosophy or questions of taste.

Whatever may have originated this present trend, there is a tolerably widespread conviction, among the women, that it is approved by the men. But is this a case of supply creating demand, or the reverse? Is it masculine taste that has changed, and induced women to become as they are? Or have the women spontaneously altered their ways, and compelled the men to take them as they find them? Nobody can say for certain, but use is rapidly becoming second nature. Even the schoolgirls are taking matters into their own hands.

Thus, one School Medical Officer has reported that a decrease of nearly twenty-five *per cent.* in the consumption of milk among girls at school is due to their fear of developing those curves which are the dread of every fashion-conscious young woman. This reads like a reminiscence of the 1914 hunger-strikes among the militant members of the "Suffragette" Movement. The next step may be a demand for the issue of bottles of vinegar in place of milk. At another girls' school the elder pupils have demanded "fewer games, and more lessons in domestic pursuits and the art of love." Whether the last-mentioned part of the curriculum is to include practical work is not stated; but if this tendency continues, far-reaching modifications will be necessary in the educational system. The expressions "lower-form" and "upper-form" will take on new significance, and the School-Leaving Certificate Examination may in future be expected to include questions on the use of cosmetics and perfumes, the science of slimming, the art of flirtation and the cultivation of sex-appeal; while the degree of S.A. will take the place of the B.A. at Girton and Newnham. The engagement of an all-male staff, to give the girls some preliminary practice, will be a step in the right direction, and St. Trinian's will no doubt be, as always, in the forefront of these reforms. Mr. Ronald Searle will find in these suggestions plenty of scope for his versatile pencil, and the "breaking-up rags" at the end of the Christmas Term should provide him with plenty of inspiration.

It will then be for Eton, Harrow and Winchester to take the lead in organizing a male Resistance Movement to instruct the public schoolboy in methods of self-defence against these insidiously aggressive preparations. The Headmasters' Conference should set up an Emergency Committee to study counter-measures without a moment's delay. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons Act, 1933, s. 84—*Application to revoke fit person order.*

In 1950, upon complaint made on behalf of the N.S.P.C.C., RW, a child then age ten years, was found to be in need of care or protection and was committed by juvenile court to the care of the local authority until he attains the age of eighteen years. JW, the father of RW, has now made complaint under s. 84 of the Children and Young Persons Act, 1933, asking that the order may be revoked and that custody of the child be restored to the complainant.

I can find no guidance in the Act or Rules as to the procedure in such a case but assume it will be necessary to summon the local authority and the person upon whose complaint the order was made to appear at the hearing.

Your valued opinion on this point and generally will be appreciated.

CH. STEL.

Answer.

This, being an application to revoke an order of a court, will follow the ordinary procedure in such matters, and should be by way of a summons addressed to the interested persons. (*See* note to s. 84 on p. 88 of *Clarke Hall and Morrison on Children*, 4th ed.). Rules 15 and 24 of the Summary Jurisdiction (Children and Young Persons) Rules, 1933, give some guidance as to the persons who should be notified of such an application. In this case we think the summons should be addressed to the child, the local authority and the person on whose complaint the order was made.

2.—Class C Licences—*Road and Rail Traffic Act*, 1933.

This council have several five-cwt. vans in use and would be obliged for your opinion as to whether any or all of them when used solely for the purposes as set out below should carry class C licences.

(1) For the collection of rents from houses owned by the council.
(2) By office staff engaged upon council's work. The van in this case may carry surveying instruments.
(3) A plumber, joiner and painter as a means of transport from his depot to a particular housing site. The van in this case would carry his tools only.
(4) or as (3) but a small quantity of material such as paint or lead pipe in addition.

CH. JAN.

Answer.

By s. 1 (6) of the Road and Rail Traffic Act, 1933, the performance by a local authority of its functions is deemed to be the carrying on of a business, and under s. 2 (4) a C licence is required for the carriage of goods in connexion with the business.

Regulation 12 of the Goods Vehicles (Licences and Prohibitions) Regulations, 1936, requires the appropriate identity certificate to be affixed to the vehicle at any time it is used under the licence.

The term "goods" is defined in s. 36 of the Act to include goods or burden of any description.

Surveying instruments, tools, and material such as paint or lead pipe are not the personal effects of the staff, such as passengers in a vehicle might normally carry, and we therefore think that it is necessary to carry a C licence in cases (3) and (4), in case (2) when surveying instruments are carried, but not in case (1).

3.—Husband and Wife—*Adultery by wife—Conduct conducing to —Maintenance of children.*

Could you please advise whether s. 6 of the Summary Jurisdiction (Married Women) Act, 1895, applies in regard to an application in general in respect of the maintenance of children as well as for the maintenance of a married woman, *i.e.*, that where adultery is proved against a married woman applicant, then *no* order can be made against the father in respect of the maintenance of his children under that Act, or whether under the Maintenance Orders (Facilities for Enforcement) Act, 1920, a court may deal with the maintenance of the children under the Matrimonial Causes Act, 1937, or such other Acts in force.

The position here is that in 1949 an agricultural scheme was operated and a contingent of local inhabitants was recruited for work with various county agricultural executives committees in England. During this employment regular weekly allotments were made to the wives and children through the local Treasury. Many of these volunteers have drifted to industrial employment and in many cases no financial support has been forthcoming since the new employment. Letters of reminders have been ignored in a few instances.

Unfortunately, in some cases the wives have committed adultery, and illegitimate children now live with the children born in wedlock. It may be that in some cases it can be proved such adultery has been conduced by the husband by his "wilful" neglect in not answering appeals by the wife, although it could be proved that he has in fact received the correspondence. Would this be an accepted defence to adultery?

Reciprocatory arrangements exist in this Colony and the U.K. Act has been extended to it.

In some cases provisional orders have already been confirmed by English courts but the question of infidelity on the part of the married woman applicant here did not arise, but the fresh cases now arising seem to indicate husbands are shirking their responsibilities, causing destitution, and thereby encouraging infidelity as a possible means to an end.

Under s. 24 of the local ordinance, English statute law applies, but since there is a local ordinance which incorporates the Maintenance Orders (Facilities for Enforcement) Act the definitions under the local ordinance of which are,

> "Maintenance order" means an order, other than an order of affiliation, for the periodical payments of sums of money towards the maintenance of the wife, or other dependants, of the person against whom the order is made.
>
> "Dependents" means such persons as that person is according to the law in force in the part of Her Majesty's Dominions in which the maintenance order was made, liable to maintain,

then the local ordinance takes precedence. However, adjudicating justices are influenced by stated cases in English law, hence the raeson for raising this question on the basis of English practice.

The text of the local ordinance is almost identical with that of the Maintenance Orders (Facilities for Enforcement) Act, 1920, with alterations to fit this Colony in place of the United Kingdom.

STAT.

Answer.

The Act of 1920 does not create fresh grounds for making maintenance orders, and so we are thrown back upon the statutes authorizing the making of such orders. The effect of s. 6 of the Act of 1895 is that no order, whether in respect of the wife's or the children's maintenance, can be made on the application of a wife who has committed adultery, unless there has been conducing on the part of the husband. The principle that desertion is not necessarily conduct conducing to adultery was re-affirmed by the Court of Appeal in *Richards* v. *Richards*, noted in our issue of June 14. Desertion coupled with failure to pay any maintenance may be such conduct however and it is a matter for the magistrates to consider in the light of all the circumstances.

Where it appears impossible to make application under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, application might be made by the wife for an order giving her the custody of any child of the marriage and maintenance for them from her husband, under s. 7 of the Guardianship of Infants Act, 1925. In this case, the wife does not have to prove any matrimonial offence by her husband or that he conduced to her adultery, because the court is concerned with the welfare of the child, and the question of maintenance for the wife does not arrive.

In the case of an illegitimate child, there appears to be no way of obtaining maintenance unless affiliation proceedings can be taken against the putative father in the Colony. The Act of 1920 does not apply.

4.—Private Street Works Act, 1892—*Land vested in council as access to recreation ground—Inclusion in apportionment.*

My council have resolved to make up Blank St. under the Act of 1892 and to apportion the expenses according to frontage. A problem arises as to a strip of land which is owned by the council, which has a frontage to Blank St., and is used as an access road to a public park. The facts are as follows:

(*a*) In 1935 the council acquired a rectangular shaped piece of land, together with a strip of land adjoining the northern boundary thereof and shaped like a Y, and covenanted in the conveyance (i) that the land acquired should be used for the purpose of a recreation ground or allotments only and roads leading thereto and (ii) at their own expense to make and maintain a proper road and footpath and greensward on Y.

(*b*) Blank St. runs across the top of Y, the only other means of access to the recreation ground being at the southern end where it connects with a highway maintainable by the inhabitants at large. There are gates at each end of the recreation ground which are kept locked during hours of darkness, hence there is no recognized thoroughfare through the ground.

(*c*) From base to top Y measures 200 feet, the main stem of Y for most of its width of thirty feet having been made up and maintained as a carriageway by the parks (not the highways) committee. This carriageway continues north between the arms of Y to connect with Blank St. Each arm of Y is an unmetalled footway. The space between each such footway and Blank St. comprises two grass triangles which are separated by the carriageway and are also maintained by the parks committee. No part of Y is registered as a highway maintainable by the inhabitants at large.

(*d*) On each side of Y there are houses facing Blank St. A house on the left was built soon after 1935 and has no means of access to Blank St. other than through Y, but no express consent or objection to such access seems to have been given or made by the council, though it is clear from the application for town planning consent that Y would have to be used by the owner of the site : the house has also been connected through Y to a sewer in Blank St. since 1944. A house on the right was built about three years ago, this house also having no means of access to Blank St. other than through Y, but in this case the council granted to the owner a right of way over Y in fee simple and later also granted an easement in fee simple for a drain to pass through the right arm of Y and the grass triangle adjoining. There are also two houses with frontages partly to Y and partly to Blank St.

For the purpose of the Act of 1892 it seems necessary first to decide whether or not Y has been irrevocably dedicated to some public purpose : *Plumstead Board of Works* v. *British Land Co.* (1875) 39 J.P. 376, and the other cases cited in the P.P. at 114 J.P.N. 609. Your advice would be appreciated on this and on the procedure to be adopted under the Act of 1892, with particular reference to the following points :

(1) Whether the whole or part of Y comprises " premises " for the purposes of the Act.

(2) If Y does not comprise premises, whether its frontage should be omitted from the provisional apportionment, and in any event whether under the proviso to s. 10 (premises having access to the street through a court passage or otherwise) the council could include in such apportionment all houses which have a frontage to Y on the basis of the frontage those houses would have to Blank St. were their curtilages to extend northwards to the street boundary.

(3) If Y does comprise premises, whether on the facts disclosed you consider (i) that Y is capable of having an owner for the purpose of the Act, and if not, (ii) whether Y should still be included in the provisional apportionment with the ultimate result that the apportioned expenses would still fall on the council, though not as owners.

(4) Depending on your view as to whether Y is premises and can have an owner, whether you can suggest any way in which the council as such owner can limit its liability to the width of the carriageway where it connects with Blank St. and thus avoid payment in respect of the remainder of the frontage of Y, without having recourse to the " degree of benefit " principle. PALL.

Answer.

(1) Yes, in our opinion.
(2) This does not now arise.
(3) (i) No. (ii) Yes.
(4) No.

5.—Public Health Act, 1936, s. 269—*Open Spaces Act*, 1906—*Alleged public right to play games.*

A council has granted a licence under s. 269 of the Public Health Act, 1936, authorizing a person to allow private land close to the sea to be used as sites for up to a hundred moveable dwellings, subject to conditions with respect to the number and classes, the space to be kept free between any two, water supply, and for securing sanitary conditions.

Planning permission is not necessary because the land was used for a similar purpose before the Planning Acts came into operation. The licensee desires to construct sanitary conveniences and has obtained byelaw approval. The planning authority has not, however, granted permission for these conveniences to be built. It is said that, despite the fact that the land has been used for many years by holiday campers, there are public rights of way over the land and to play games. Could the council make a charge and permit the use of the land for holiday campers if it could purchase it under the Open Spaces Act, 1906, by agreement, there being no compulsory purchase powers, and erect on an open space sanitary conveniences ?

Are there any other powers available to the council for the purpose of acquiring the land and allowing it to be used, on payment, by holiday campers and for constructing sanitary conveniences without depriving the public of the rights of way and to play games by such use and construction bearing in mind that some members of the public say that they have a right to wander anywhere on the land ?

PEVO.

Answer.

There is no such right known to the common law as a right to stray indefinitely over land and there is no right to play games over land except by custom, and then it is confined to a limited class of persons. The existence of defined rights of way should not by itself be an objection to permission for the conveniences. The council may purchase land by agreement or compulsorily for camping sites, and may make charges therefor under the Physical Training and Recreation Act, 1937, ss. 4 and 5.

6.—Road Traffic Acts—*Atco motor mower—Small type controlled by pedestrian walking behind—Is this a motor vehicle within s. 1 Road Traffic Act*, 1930 ?

I own a house part of whose garden is across a public highway and I am in the habit of taking a motor mower across this highway under its own power. The mower is the small type controlled by a pedestrian walking behind it and has no seat. My attention has been drawn to group C of vehicles for which a driving licence is required, which reads : " mowing machine or vehicle controlled by a pedestrian." This would seem to cover my case. What is more important obviously is the question of whether the mowing machine is a vehicle requiring to be insured against third party risks and it seems to me that if it could be held under s. 1 of the Road Traffic Act, 1930, to be a vehicle " intended or adapted for use on roads " then it must be a motor cycle under s. 2 since it has less than four wheels and is not an invalid carriage and does not exceed eight *cwt.* in weight.

This result seems fantastic and I shall be glad to have your opinion (*a*) whether a driving licence is necessary when crossing the road with the mower and (*b*) whether third party insurance is also necessary and for a road fund licence. JERE.

Answer.

To be a motor vehicle within s. 1 the mower must be a mechanically propelled vehicle which is *intended or adapted for use on roads*. We think this is clearly not intended for such use, and it has not been adapted for such use (*see* on " adapted " *French* v. *Champion* (1920) 83 J.P. 258). We consider, therefore, that neither licence nor insurance is required.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

COUNTY OF SURREY

Petty Sessional Division of Wallington

APPLICATIONS are invited for the post of Second Assistant Clerk to take up duties on February 1, 1953. Salary £375 to £440 plus London Weighting.

Applications, with two copies of recent testimonials, must reach the undersigned by December 27, 1952.

A. J. CHISLETT,
Clerk to the Justices.

COUNTY OF BERKS

Appointment of Male Probation Officer

THE Berkshire Probation Committee invite applications for the appointment of a male whole-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949 to 1952. Applicants must not be less than twenty-three nor more than forty years of age, except in the case of a serving whole-time Probation Officer. Applicants should state whether they have, or are able to drive, a car. The selected applicant will be required to pass a medical examination. Forms of application can be obtained by sending a stamped and addressed envelope to the undersigned and must be returned not later than January 5, 1953.

E. R. DAVIES,
Secretary of the Berkshire Probation Committee.

Shire Hall,
Reading.
December 5, 1952.

CITY AND COUNTY OF NORWICH

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor at a salary in accordance with Grade VIII or IX of the National Scale of Salaries, according to experience.

Applicants must be good advocates and experienced in common law and conveyancing.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and to termination by one month's notice.

Canvassing, directly or indirectly, will be a disqualification.

Applications, stating age, qualifications, experience, details of previous and present appointments, with salaries, and giving the names of two referees, should be delivered to me not later than Monday, January 5, 1953.

BERNARD D. STOREY,
Town Clerk.

City Hall,
Norwich.

HAMPSHIRE COMBINED PROBATION AREA

Appointment of an Additional Full-time Female Probation Officer

APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers for the appointment of an additional Full-time Female Probation Officer for the above area. The successful applicant will be required to act, and to live, in the Alton-Petersfield areas. Candidates must be not less than twenty-three nor more than forty years of age (except in the case of serving officers).

The appointment and salary will be in accordance with the Probation Rules, and the salary will be subject to superannuation deductions.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than December 31, 1952. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
December 9, 1952.

Printed in Great Britain by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. Registered at the G.P.O. as a newspaper. Saturday, December 13, 1952. Price 2s. 3d. with Reports, post free 2s. 5d. ; without Reports 1s. 3d., post free 1s. 5d. Subscription rates : £6 per annum with Reports ; £3 10s. per annum without Reports.